

**IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.**

A.O. No. 293/2004

- 1- Ram Dutt S/o Late Gopal Dutt
2- Smt. Nanda Devi W/o Ram Dutt,
Both R/o Village Bhujiya No.3,
Khatima P.S. Khatima, District U.S. Nagar Appellants.
...Appellants.
Vs.
1- Ashok Kumar Gupta S/o Ram Prasad Gupta,
R/o Nai Basti Pilibhit, District Pilibhit
U.P.
2. The Oriental Insurance Company Ltd.
Through Divisional Office, Haldwani
District Nainital Respondents.

Sri Vinay Kumar, holding brief for Smt. Farida Siddiqui,
Advocate for the appellants.
Sri D.S. Patni, learned counsel for the Oriental Insurance
Company.

(Hon'ble B.C. Kandpal, J.)

This appeal, under Section 173 of Motor Vehicle Act, has been preferred by the claimants for enhancement of compensation, against the judgment and award dated 13.5.2004, passed by Motor Accident Claim Tribunal/Ist Additional District Judge, Udham Singh Nagar (Rudarpur), in M.A.C.T. Case No. 54 of 2003, Ram Dutt and another Vs. Ashok Kumar and another, awarding compensation for a sum of Rs. 1,02,000/- along with interest @ 5% per annum from the date of presentation of the petition till the final payment to be paid by the Oriental Insurance Company.

2- Brief facts of the case are that on 8-2-2003 at about 5.00 P.M. Ravindra Joshi, son of the claimants, was returning his home from Khatima market in a scooter along with Kewal Singh. The scooter detected defect near the gate of Madi Samiti and both were bringing the scooter, suddenly Mini Bus bearing registration No. U.P. 26-8545 came there rashly and negligently and dashed the scooter due to which Ravindra Joshi sustained grievous injury on his head and he died instantaneously on the spot. The deceased was the student of class-10th and was 17 years of age. He used to earn Rs. 2000/- per month

from the tuition work. Hence the claimants filed claim petition for Rs. 5,00,000/-.

4- The O.P. No.1, owner of the offending bus No. UP 26/8545 filed W.S. and denied the averments of the petition by was of ignorance. He alleged that the bus was insured with Oriental Insurance Company under insurance cover No. 203069. It was also alleged that the accident occurred due to the fault of the scooterist and the petition is bad for non-joinder of insurer and owner of the scooter involved in the accident.

5- The O.P. No.2, Oriental Insurance Company contested the claim by filing its W.S. It alleged that the driver of the offending bus had no valid driving licence at the time of accident and the company is not liable to pay any compensation.

6- On the pleadings of parties, the Tribunal framed the following issues in the claim petition:-

1- Whether the accident had occurred on 8-2-2003 at 5.00 P.M. near Kali Temple situated on Khatima-Pilibhit road when the deceased Ravindra Joshi along with Kewal Singh was returning his home on a scooter and Mini Bus bearing registration No. U.P. 26-8545, being driven rashly and negligently, hit the scooter and Ravindra Joshi died at the spot?.

2- Whether the claimants are entitled to get any compensation? If so, how-much and from whom?.

7- Thereafter, parties led evidence in support of their cases. The Tribunal, after perusal of the material on record and having heard the learned counsel for the parties, awarded compensation of Rs. 1,02,000/- to the claimants along with interest @ 5% per annum from the date of presentation of the petition till the final payment to be paid by the Oriental Insurance Company.

8- Being dissatisfied with the amount of compensation, the claimants/appellants have preferred this appeal for enhancement.

9- I have heard the learned counsel for the parties and perused the record.

10- Learned counsel for the claimants/appellants has submitted that the Tribunal has not assessed the evidence of the claimants with regard to the income of the deceased and has awarded the lump sum amount as compensation and the finding of the Tribunal in this regard is against the relevant provision of law.

10- On the other hand learned counsel for the insurance company has submitted that the deceased was a student and he had no income at the time of his death and the learned Tribunal has correctly awarded the amount of compensation.

11- I have perused the finding recorded by the Tribunal on the point of compensation. The Tribunal simply has given the finding that the deceased was about 17 years of age and no evidence was produced with regard to his earning from tuition work. The claimants/appellants have come up with the case that the deceased was also doing the tuition work and was earning Rs. 2000/- per month. This fact has not been rebutted on behalf of the Opposite Parties by any evidence. This is the admitted case of the appellants/claimants that their son Ravindra Joshi at the time of accident was about 17 years of age and was the student of class-10th. In near future, after finishing his education, the deceased would have been helping the claimants being employed somewhere else. However, the income of the deceased to the tune of Rs. 2000/- from the tuition work has not been refuted from the said of the opposite parties, therefore, I assess the monthly income of the deceased as Rs. 2000/-, annual income comes to Rs. 24000/- and after deducting 1/3rd towards personal expenses, the total annual dependency of the claimants comes to Rs. 16,000/-.

12- The deceased at the time of accident was 17 years of age. Considering that the claimants are parents of deceased Ravindra Joshi, the multiplier of '10' in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another reported in (2003) 8 SCC 731**, would be appropriate in this case.

13. By multiplying the annual dependency of Rs. 16,000/- with the multiplier of '10', the compensation works out to Rs. 1,60,000/-. The claimants are further entitled to receive Rs. 2000/- towards funeral expenses. Thus the total compensation comes to Rs. 1,62,000/-.

14- So far as the rate of interest is concerned, the Tribunal awarded interest @ 5% per annum from the date of presentation of petition till final payment. The finding of the Tribunal need no interference so far as the rate of interest is concerned.

15- In view of above the appeal is partly allowed. The impugned judgment and award dated 13-5-2004 is modified to the extent that the claimants are entitled to get compensation of Rs. 1,62,000/- along with interest @ 5% per annum payable by the O.P./Respondent, Oriental Insurance Company, instead of Rs. 1,02,000/- as awarded by the Tribunal. No order as to cost.

(B.C. Kandpal, J.)

Dated: 28-11-2006

ISB